PENTADBIR TANAH DAERAH PETALING

v.

GLENMARIE ESTATE LTD.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
MOHD. YUSOFF MOHAMED SCJ
AJAIB SINGH SCJ
[CIVIL APPEAL NOS. 01-52-89 TO 01-58-89]
10 JANUARY 1992

REVENUE LAW: *Assessment of market value of properties - Failure of the learned Judge to consider the comparable sale of adjoining land - Relevance - Evidence of previous acquisition award - Base value Collector's assessment and award - Injurious affection - Assessment of primary facts - Land Acquisition Act 1960, s. 8*

The appellant, the Pentadbir Tanah Daerah Petaling, Selangor Darul Ehsan appealed against the decision of the learned Judge's determination of the market value of 7 pieces of lands (scheduled lands) belonging to the respondent, the Glenmarie Estate Ltd., which was acquired by the Goverment under the Land Acquisition Act, 1960 (the Act). The appeal was based on the ground that the learned Judge had failed to consider the comparable sale of adjoining estates namely the Pilmore Estate and Seafield Estate as indicative of the market value of the scheduled lands.

The issue raised was whether in determining the market value of the remaining scheduled lands, the learned Judge had relied solely on the award made by the High Court in relation to a portion of Lot 3588, which was part of the Glenmarie Estate. The Judge had doubled the award in that particular assessment on the basis that the Pemungut Hasil Tanah had in his assessment done likewise. However, the trial Judge gave allowances for the location of the lands, its size and the time period during which the acquisition took place.

The learned Counsel for the appellant submitted that the learned Judge had indulged in mathematical speculation and erred in law in not considering the comparable sales of adjoining land for the purpose of determining the market value of the scheduled lands and further that the learned Judge accepted the evidence of the previous acquisition award of the same estate as relevant consideration indicative of the market value of the property.

Held :

[1] It is not wrong for the learned Judge to accept the evidence of previous acquisition award of the same estate as a relevant consideration indicative of the market value of the property. However, valuation is not an exact science capable of strict mathematical process and in particular when the base value of the previous compensatory award was quite remote, as has been accepted by the learned Judge in the present case.

[2] In determining the market value it may be useful to be reminded that the accepted norm in considering the market value of land may be roughly described as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land.

[3] It would be more reliable to follow the normal guide accepted by this Court in determining the fair market value of the scheduled lands by considering the sales of similar lands in the neighbourhood after making due allowances for all circumstances, when such evidence is available.

[4] The Court will not interfere with the Pemungut Hasil Tanah's assessment and award with respect to injurious affection pertaining to three of the scheduled lands as these necessarily involved his assessment of primary facts which were dependent upon his observations of the witnesses whom he alone had the advantage of hearing and seeing or observing the properties himself. The assessments in relation to the remainder of the scheduled lands were adjusted based on remoteness of locality and size.

[Appeal allowed with costs to be taxed.]

*[**Bahasa Malaysia** Translation of Headnote]*

UNDANG-UNDANG HASIL: *Taksiran harga pasaran tanah - Samada Hakim gagal mengambil kira harga jualan bandingan harta tanah yang berhampiran - Bukti award pengambilan tanah yang dahulu - Nilaian asas dahulu - Taksiran dan award Pemungut Hasil Tanah - Kerugian yang menjejaskan nilaian - Taksiran fakta primer - Akta Pengambilan Tanah 1960, s. 8.*

Pentadbir Tanah Daerah Petaling, Selangor Darul Ehsan telah merayu terhadap keputusan Hakim yang arif mengenai penentuan harga pasaran yang dibuat oleh Hakim yang melibatkan 7 bidang tanah (tanah tersebut) yang dimiliki oleh responden, Ladang Glenmarie Bhd. di Selangor Darul Ehsan yang telah diambil oleh Kerajaan dibawah Akta Pengambilan Tanah 1960 (Akta tersebut). Rayuan tersebut berasaskan hujjah bahawa Hakim yang arif telah gagal mengambil kira harga jualan harta tanah yang berhampiran iaitu Ladang Pilmore dan Ladang Seafield sebagai tanda bandingan harga pasaran.

Isu dalam kes ini ialah adalah sama ada yang Hakim yang arif telah bergantong semata-mata pada award Mahkamah Tinggi yang dahulu sehubuongan dengan Lot 3588, yang merupakan sebahagian dari Ladang Glenmarie, apabila menentukan harga pasaran tanah itu yang belum ditentukan dengan harga pasarannya. Hakim yang arif telah melipatgandakan award dalam taksiran khusus itu, berdasarkan anggapan bahawa Pemungut Hasil Tanah telah melakukan taksiran beliau atas dasar yang sama. Walau bagaimanapun, Hakim yang arif telah memberi perhatian khusus terhadap lokasi tanah itu, saiznya dan jangka masa apabila pengambilan tanah itu berkuatkuasa.

Peguam bagi pihak perayu, telah berhujjah bahawa Hakim yang arif telah melibatkan spekulasi matematika dan telah melakukan kesilapan undang-undang, kerana beliau mengambil kira harga jualan harta tanah yang berhampiran untuk menentukan harga pasaran tanah tersebut itu dan bahawa Hakim yang arif telah menerima bukti award pengambilan tanah yang dahulu ladang-ladang yang sama sebagai balasan relevan yang menandangkan harga pasaran harta tanah.

Diputuskan :

[1] Adalah tidak salah jikalau Hakim yang arif menerima bukti award pengambilan tanah yang dahulu ladang yang sama sebagai balasan relevan yang menandakan harga pasaran harta tanah. Walau bagaimanapun, penilaian bukanlah sains yang tepat mengikut proses matematika dalam ertikata yang sebenar, khasnya apabila nilaian dasar award ganturugi yang dahulu tidak kena pada tempatnya, seperti yang diterima oleh Hakim tersebut dalam kes ini.

[2] Dalam menentukan harga pasaran, adalah wajar sekiranya diperhatikan bahawa, kaedah biasa yang dipakai apabila menentukan harga pasaran harta tanah yang boleh digunakan sebagai panduan harga ialah harga yang seseorang pemilik harta ingin, bukan dipaksa, menjual dan dianggap sebagai harga berpatutan daripada pembeli yang hendak beli, berasaskan tawaran jual beli.

[3] Adalah lebih jika kaedah biasa yang diberi oleh Mahkamah ini dalam menentukan harga pasaran yang saksama, diikuti, iaiatu mengambil kira nilai harta tanah yang sama dan berhampiran, setelah membuat peruntukkan tertentu untuk semua suasana yang bersangkutpaut, apabila keterangan tersebut sedia ada.

[4] Mahkamah ini tidak akan ganggu taksiran dan award yang telah diberi oleh Pemungut Hasil Tanah mengenai penentuan kerugian yang menjejaskan berkaitan dengan tiga bidang tanah dalam tanah tersebut, memandangkan bahawa keputusan itu berdasarkan taksiran fakta primer yang bergantung sepenuhnya pada pendengaran saksi-saksi secara bersemuka dan penelitian harta tanah itu. Taksiran mengenai harta tanah yang baki itu diubahsuaikan berasaskan lokasi dan saiz harta tanah itu.

[Rayuan dibenarkan; kos ditaksirkan.]

Case referred to:
Nanyang Manufacturing Co. v. The Collector of Land Revenue, Johore [1954] MLJ 69 ***(foll)***

Legislation referred to:
Land Acquisition Act 1960, s. 8

For the appellant - Hishamudin b. Mohd. Yunus (Puan Hasnah Hashim with him)
For the respondent - Wong Soon Foh (Tam Mei Leng with him)

JUDGMENT

Mohd. Yusoff Mohamed SCJ:

In this appeal the Pentadbir Tanah Daerah Petaling, Selangor Darul Ehsan (formerly known as Pemungut Hasil Tanah Petaling) appealed against the decision of the learned Judge relating to his determination by increasing the market value of the 7 pieces of lands (scheduled lands) belonging to the respondent, the Glenmarie Estate Ltd. in Selangor Darul Ehsan, which was acquired by the Government under the Land Acquisition Act 1960, (the Act) on the ground that the learned Judge has failed to consider the comparable sale of two adjoining estates namely the Pilmore Estate and Seafield Estate as indicative of the market value of the scheduled lands.

The lands acquired, the purpose for which they were intended to be used, and the gazetted date of acquisitions for determining the market value of the lands by virtue of s. 8 of the Act are as follows:

No.	Application No.	Acquisition Date	Acres Acquired	Purpose per Acre	Collector's Award per Acre	Judge's Award
1.	A2/84	14.1.82	0.4639 acres	Switching Station	RM60,000	RM90,000
2.	A3/84	18.6.81	60 acres	Quarters for police airwing	RM35,000	RM57,600
3.	A2/85	24.11.83	9.014 acres	Klang Expressway	RM60,000*	RM117,000
4.	A38/85	8.10.81	12.118 acres	Public purpose (Klang Expressway	RM45,000**	RM70,000

5.	A50/85	8.10.81	55.934 acres	-do-	RM38,000***	RM59,500
6.	A61/85	3.3.83	0.7 acres	Toll Gate	RM62,000	RM78,750
7.	A64/86	5.12.85	11.28125 acres	Petronas Gas Pipe-line	RM65,000	RM85,200

* injurious affection at RM6,000 per acre only for 3 acres = RM18,000 was also awarded *RM70,200

** injurious affection awarded RM48,000 ** @ RM14,000 p.a. RM168,000

*** injurious affection awarded RM125,000 *** @ RM11,900 per acre for 38.4 acres = RM456,900

Glenmarie Estate comprised of Lots 3588, 162, 994 and 29, had a total area of 1,239.5 acres, and the scheduled lands acquired were from various parts of these Lots. Its location was approximately 10 miles from Kuala Lumpur and 2.2 miles from the Subang International Airport though bordering the road leading to it. A small portion of Lot 3588 was acquired by the Government on 5 July 1979. The Pemungut Hasil Tanah's award of RM30,000 per acre for the portion acquired in 1979 was increased to RM45,000 per acre by the High Court and further appeal to the Supreme Court by the respondent was dismissed.

At the time of the present acquisition Glenmarie Estate was still agricultural land planted with rubber and oil palm and there is no evidence that the land owner has made any application to convert the land to other uses or to develop it for other purposes. There was also no zoning of the area gazetted by local authorities for any particular purpose.

In his judgment the learned Judge in determining the market value of the scheduled lands solely relied on the award made by the High Court of the portion of Lot 3588 at RM45,000 per acre as market value in 1979. For the purpose of assessing the value of the present land at item 1, Application A2/84, as at 14 June 1982, the learned Judge doubled the award to RM90,000 per acre for the reason that the Pemungut Hasil Tanah had in his assessment done likewise. In his written judgment he states :

> Kita perhatikan bahawa tanah ini adalah berdamping dengan tanah yang telah diambil oleh Pemungut Hasil Tanah di dalam tahun 1979 atas Lot yang sama atas pampasan sebanyak RM30,000 seekar yang telah dinaikkan oleh Mahkamah Agung kepada RM45,000 seekar. Kita perhatikan di sini dengan jelas bahawa pihak Pemungut Hasil Tanah telah sanggup menaikkan harga dari RM30,000 seekar pada tahun 1979 kepada RM60,000 seekar di dalam tahun 1982, iaitu di dalam masa 21/2 tahun harga tanah Lot 3588 telah naik sebanyak 100%, bermakna di dalam masa setahun kadar kenaikan ialah 40%. Hakikatnya ialah bahawa Mahkamah Agung telah menaikkan harga tanah pengambilan tersebut dari RM30,000 seekar kepada RM45,000 seekar. Dengan itu bermakna harga tanah yang terbabit di sini pada bulan Januari 1982 ialah RM90,000 seekar.

In determining the market value of the remaining scheduled lands in this appeal the learned Judge employed the same formula but giving allowances for the location of the lands, its size and the time frame when the acquisition took place. With that background the learned Counsel for the appellant submitted that the learned Judge has indulged in mathematical speculation and erred in law in not considering the comparable sales of adjoining land for the purpose of determining the market value of the scheduled lands.

In our view it is not wrong for the learned Judge to accept the evidence of previous acquisition award of the same estate as relevant consideration indicative of the market value of the property. However, it is trite law that valuation is not an exact science capable of strict mathematical process and in particular when the base value of the previous compensatory award was quite remote, as has been accepted by the learned Judge in the present case. It would be more reliable to follow the normal guide accepted by this Court in determining the fair market value of the scheduled lands by considering the sales of similar lands in the neighbourhood after making due allowances for all circumstances, when such evidence is available. In this regard it may be useful to remind us that the accepted norm in considering

> the market value of land may be roughly described as the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land.

Nanyang Manufacturing Co. v. The Collector of Land Revenue, Johore [1954] MLJ 69.

In evidence as shown in common plan adduced by both parties there were two sales in 1983 of lands closer and adjoining to the scheduled property :

1. On 8 August 1983 the Pilmore Estate adjoining the subject property (Glenmarie Estate) to its south comprising of 400 acres was transacted at RM60,000 per acre.
2. On 29 June 1983 the Seafield Estate also closely situated to the subject property to its north comprising an area of 398 acres was sold at a price of RM64,000 per acre.

The prices paid for these sales could be used as comparable and offer the best indication of market value for large estates as the subject property, after making allowances for time factor, size and other dissimilarities.

On the time factor it is common ground that the state of the property market during the period indicated a rising trend between 1980 to 1983 but turned downward in 1984 and 1985. Although these indices show increases for demand and sales recorded in residential and commercial properties in Kuala Lumpur and Petaling Jaya between the years 1980 to 1983, there is no record of similar upward demand and sale in agricultural estate lands in the area.

In reviewing these evidence and considering the value of estate lands in the locality of the scheduled property between the years 1979 at RM45,000 per acre (compensatory award on portion acquired of Lot 3588) and in 1983 at RM64,000 per acre (the sale of Seafield Estate) it would seem that the various awards made by the Pemangut Hasil Tanah Petaling for the scheduled lands acquired between the years 1981 to 1985 at the market value ranging from RM45,000 per acre (in 1981) to RM65,000 per acre (in 1985) were fair and reasonable. Exception having been made in respect of market value for the case A3/84 for which an award of RM35,000 per acre was made by the Pemungut Hasil Tanah for 60 acres of lands acquired on 18 June 1981. As shown in evidence, an adjustment has been made for the value of this land as less attractive considering its remote location by 35% as compared to other lands sited along Jalan Lapangan Terbang and Subang New Village, its larger size and the fact that it was also located directly under the path of air flights from the airport. Similar adjustment was also made in respect of case A50/85 because of its remote location and size.

On behalf of the respondent it was argued that the award for Lot 1764 an area of 5 acres which was acquired by the Government on 8 October 1981 at RM145,000 per acre should be the starting point as assessment for the value of the scheduled properties. The said land

also formed part of the Glenmarie Estate but separated by the Subang Highway. It was urged that when taking the value paid for Lot 1764 as base factor the learned Judge's award was considered fair and should be affirmed.

On the other hand the appellant's record shows that the portion of the estate in Lot 1764 was earlier sold by the respondent to the registered owner's family member in 1972. It was a developed property with a permanent house on it, a store, dogs kennels, two utility blocks and a guardhouse. The whole area were enclosed by a chain link fence and used as an orchid farm. The property was acquired on 8 October 1981 for Klang Valley Expressway and a compensation of RM145,000 per acre was awarded to the owner for cost of land including injurious affection to orchid plants and fruit trees.

We agree with the appellant that this Lot 1764 was an improved property at the time when it was acquired. It enjoyed a road frontage of 1/4 mile along its border with Jalan Lapangan Terbang and with those advantages it should not be considered as comparable sale for valuation of the present scheduled estate lands.

We do not propose to interfere with the Pemungut Hasil Tanah's assessment and award with respect to injurious affection pertaining to cases A2/85, A38/85 as these necessarily involved his assessment of primary facts which were dependent upon his observations of the witnesses whom he alone had the advantage of hearing and seeing or observing the properties himself.

With due respect we find that the learned Judge has not applied correct principle in making his award. The appeal is allowed with costs to be taxed.

Also found at [1992] 1 CLJ 360